IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4854 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

ALL GUJARAT EMPLOYEES ASSO

Versus

GUJARAT DAIRY DEVELOPMENT CORPN

Appearance:

MR A.K. Clerk for KR KOSHTI for Petitioner

MR KM PATEL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No.2

Mr.R.V. Desai, Asstt. Govt. Pleader for respondent no.3

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: / /2001

C.A.V. JUDGEMENT

The present petition is field by All Gujarat Employees Association against the Gujarat Dairy Development Corporation Limited (hereinafter referred to as "GDDC Limited"), Abad Dairy and the State of Gujarat, through the Secretary, Finance Department, for the reliefs as set out in para 6 of the petition, wherein a writ of mandamus is prayed for to hold that the action of the respondents of not giving forms or not permitting the Badli workers for opting voluntary retirement scheme (hereinafter referred to as "VRS") is illegal, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India.

2. The case of the petitioner is that the petitioner is a registered trade union under the provisions of the Trade Unions Act, 1926 and is therefore, entitled to represent the grievances of its members before any authority or court of law. It is the case of the petitioner union that the members of the petitioner union who were working under Abad Dairy since 1982 and thereafter and have completed service of 10 years or more and that they have been continued and their names are borne on the muster roll till today under the provisions of sec.25D of the Industrial Disputes Act (neither in para 1 nor in para 2 it is mentioned that the petitioner is making grievance about Badli workers).

3. Mr.A.K. Clerk submitted that respondent no.1 issued a circular dated 8.7.1999 bearing No.GDDC/ Adm/ 99/ 1108, whereby the officers and the employees working in GDDC Limited were given an opportunity to opt for VRS, the details of which are set out in that circular. A copy of the circular is produced at Annexure 'C', page 20. Mr.Clerk submitted that the said circular, in its opening para states that earlier by circulars dated 9.1.1998, 15.9.1998 and 5.1.1999, applications were invited for VRS. All those circulars are cancelled and by the present circular (i.e. 8.7.1999) de novo applications are invited for VRS. Mr.Clerk submitted that the circular refers to, "officers and employees working in GDDC Limited". The circular does not say that it is not applicable to Badli workers.

4. Mr.Clerk submitted that assuming without admitting that the circular is meant only for 'permanent officers and employees', it is violative of Article 14 as it does not cover 'Badli workers'. Mr.Clerk submitted that the action of the respondents, more particularly of respondents no.1 and 2 of not offering benefits of VRS to all 'Badli workers' is violative of Article 14 inasmuch as the benefits of VRS are extended to four 'Badli

workers', whose names are set out in para 3 of the petition.

5. Mr.Clerk made available certain circulars and documents on which reliance is placed. Mr. Clerk submitted that in Circular dated 8.7.1999, issued by the respondent no.1, it has given a go by to the scheme declared by Govt. of Gujarat, Finance Department by its circular no. JNV/ 1097/ 413/ A dated 27.11.1997, a copy of which was placed on record by learned advocate Shri Patel for ready perusal of the Court. Mr.Clerk submitted that earlier when respondent no.1 had invited applications by Circulars dated 9.1.1998, 15.9.1998 and 5.1.1999, the aforesaid Circular of the Govt. dated 27.11.1997 was referred to in the Circulars issued by respondent no.1. In the present circular dated 8.7.1999, respondent no.1 has not referred to the Circular dated 27.11.1997 of the Government meaning thereby that respondent no.1 has given a go by to the policy of the Govt. declared by Circular dated 27.11.1997. Mr.Clerk pointed out that after the Circular dated 8.7.1999, respondent no.1 invited applications by a circular dated 30.11.2000 bearing no.GDDC/ Adm/ 2000/ 1630. In that only circular dated 8.7.1999 is referred to and there is no reference to Govt. Circular dated 27.11.1997. Not only that respondent no.1 has also not referred to another Govt. Circular dated 28.7.1999 which was issued by Finance Department, Govt. of Gujarat, whereby Circular dated 27.11.1997 was amended. Mr.Clerk submitted that even in Circular dated 30.11.2000, there is no reference to Govt. Circular dated 28.7.1999. Mr.Clerk further submitted that respondent no.1 has issued yet another circular dated 18.12.2000 bearing no.GDDC/ Adm/ 2000/ 1660, whereby date for submitting applications was extended upto 31.12.2000. He submitted that even in that circular, respondent no.1 has not referred to Govt. circular dated 27.11.1997 as amended by a Circular dated 28.7.1999. He submitted that from this it is clear that the present VRS is announced by respondent no.1 itself and the same is not in pursuance of the Govt. scheme under circular dated 27.11.1997 as amended by circular dated 28.7.1999.

6. Mr.Clerk submitted that circular of respondent no.1 dated 8.7.1999 provides for "officers and employees working under GDDC Limited" but does not exclude "Badli workers". He placed reliance on the contents of clause 9 of the said circular wherein it is stated that,

> "GDDC Limited is registered as a sick unit and hearing of its case is pending before BIFR for

final disposal. Earlier during hearing before BIFR there was a recommendation made by BIFR to float a VRS for officers/ employees. Those officers/ employees who do not wish to take the benefit of retirement under the scheme, their services are to be brought to an end to by a legal procedure or the same will be subject to final decision taken by BIFR".

Mr.Clerk submitted that the Badli workers are not excluded even by an order of BIFR dated 4.6.2001. In support of this submission Mr.Clerk relied upon certain observations made by B.I.F.R. in para 4 of the order dated 4.6.2001, which are reproduced hereunder:

"4. .. .. For smooth transfer of assets and reviving the operations of its diaries, settling of dues of other two secured creditors through OTS and offering VRS to all the workers was the only way. Thus, GDDCL may not remain in existence after full implementation of the scheme. .. .." (emphasis supplied)

Mr.Clerk submitted that even in the order of BIFR, "all the workers" are referred to, instead of referring to only permanent workers. Mr. Clerk submitted that Badli workers are not claiming any enhanced or additional benefit. They are claiming the benefits at par with the other employees of respondent no.1, under the scheme. Mr.Clerk submitted that as 'Badli workers' are the workers of GDDC Limited, respondent no.1 herein, they are to be given equal treatment. In this regard learned advocate placed reliance on the judgement of the Apex Court in the matter between Ramchandra Shankar Deodhar and others v. The State of Maharashtra and others, reported in AIR 1974 SC 259. According to Mr.Clerk once a person is born on a cadre, his source of entry becomes immaterial. Mr.Clerk submitted that when the names of Badli workers are on the muster roll of GDDC Limited alike other workers, they are to be given the same benefits though they are Badli workers.

7. Mr.Clerk, learned advocate also contended that respondent no.1 has calculated the amount, payable to one Shri Shaileshkumar N. Soni, whose name is mentioned in para 3 of the petition. That the remaining Badli workers may also be ordered to be paid in the same terms. Mr.Clerk submitted that he is ready to restrict his claim under VRS for Badli workers to the extent that the Badli workers may be paid benefits of VRS by taking into consideration such number of years of service during

which Badli worker has completed 240 days.

8. Mr.Clerk submitted that in the present case, it cannot be said that the petition suffers from delay and laches. After the scheme was notified by a circular dated 8.7.1999, a Civil Application was filed being Civil Application No.7435 of 1999 in Letters Patent Appeal No.275 of 1997. Mr.Clerk submitted that as stated in para 4 of the petition, in the year 1990 a Special Civil Application was filed before this Court by some of the Badli workers seeking relief of regularisation of their services. Special Civil Application No.4797 of 1990, along with a group of matters was allowed by the learned Single Judge on 5.8.1996. Against that a Letters Patent Appeal No.275 of 1997 was filed. In the said Appeal, Civil Application No.7435 of 1999 was filed which came to be disposed of by order dated 25.7.2000, which reads as under:

> "Learned counsel for the applicant seeks permission to withdraw this Civil application with liberty to file a separate substantive petition for the purpose of claiming relief of consideration of Badli worker for grant of benefit under the Voluntary Retirement Scheme. On behalf of the opponent employer, the prayer for seeking permission to withdraw the Civil Application is not opposed, but the prayer to grant liberty to file a substantive petition is opposed.
>
> We allow the applicant to withdraw this Civil Application giving liberty to the applicant to seek his remedy as available under the law.
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> The Civil Application shall accordingly stands disposed as withdrawn."

9. Mr.Clerk submitted that Letters Patent Appeal No.275 of 1997 was also allowed on the same day, i.e. 25.7.2000. Mr.Clerk submitted that the present petition is filed on 25.6.2001 and therefore, it cannot be said that there is delay and laches in filing the present petition as submitted by respondent no.1 in its affidavit in reply. In the alternative Mr.Clerk submitted that in the matters of violation of fundamental rights, there is no question of delay and that on the ground the petition is not required to be rejected and reliefs prayed for are required to be considered on merits.

10. Mr.Clerk submitted that in almost similar circumstances in the matter of Gujarat Textile Corporation, a settlement was arrived at and Badli workers were given the benefit of VRS. Mr.Clerk made available a copy of the settlement for perusal of this Court. Mr.Clerk pointed out the contents of clause 4 of the said settlement wherein a provision is made for giving benefits to Badli workers who opted for VRS.

11. For respondents no.1 and 2 learned advocate Mr.K.M. Patel submitted that a petition is not maintainable under Article 226 of the Constitution of India, more so in its present form at the instance of the petitioner. Mr.Patel submitted that the cause of action, if any, is an individual cause and the same cannot be permitted to be agitated by the Union, invoking the writ jurisdiction for adjudication of industrial dispute. Mr.Patel submitted that the petition deserves to be dismissed on this ground alone.

12. Mr. Patel submitted that the petition also suffers from delay and laches inasmuch as the scheme was notified on 8.7.1999, (a copy of the scheme is produced at Annexure 'VIII', page 18) and as per that scheme, last date for submission of applications was 7.8.1999. Mr.Patel submitted that by a plain reading of the scheme, it is clear that the scheme never meant for Badli workers and it cannot be made applicable to Badli workers. It is meant only for permanent employees of GDDC Limited. He submitted that GDDC Limited is a 'sick unit'. The matter is pending before BIFR. There is no production activities since 1997 and every month idle wages are paid to the permanent employees of GDDC and therefore, to get rid of that, VRS is floated. He submitted that the origin of VRS is in Govt. Circular dated 27.11.1997. It was after that circular of the Government, GDDC Limited by its circulars dated 9.1.1998, 15.9.1998 and 5.1.1999 had called for applications. Thereafter by the present circular dated 8.7.1999 cancelling the earlier circulars, applications are invited. But VRS floated by the present circular dated 8.7.1999 is not beyond the original circular of the Government dated 27.11.1997. Mr.Patel submitted that taking into consideration these two preliminary aspects, i.e., union having no locus standi and delay in approaching this Court, the petition is required to be dismissed.

13. Mr.Patel, the learned advocate submitted that assuming without admitting that there is omission of word, 'permanent' in the circular dated 8.7.1999, but by

that omission alone the scheme does not become applicable to 'Badli workers'. Mr.Patel submitted that reading the scheme as a whole, it is more than clear that the scheme is meant only for 'permanent officers and employees' and by no stretch of imagination, it can be made applicable to 'Badli workers'. Mr.Patel submitted that the scheme is with an object to get rid of liability of paying 'idle wages' and that liability is only in the case of permanent officers and employees. In case of Badli workers since 1992 they have got no work and therefore, there was no question of any liability which can fall within the object of the VRS scheme.

14. Mr.Patel submitted that the Apex Court has held that the Badli workers are not entitled to any compensation in the event of closure of an undertaking. Mr.Patel relied upon the judgement of the Apex Court in the matter of Prakash Cotton Mills Pvt. Ltd. v. Rashtriya Mills Mazdoor Sangh, reported in AIR 1986 SC 1514. Mr.Patel submitted that paras 15 and 16 of that judgment are relevant to the facts of the present case which read as under :

"15. The next question that remains to be considered is The next question that remains to be considered is whether the Industrial Court is justified in directing payment of compensation to some of the Badli workmen. It is not in dispute that Badli workmen get work only in the absence, temporary or otherwise, of regular employees, and that they do not have any guaranteed right of employment. Their names are not borne on the muster rolls of the establishment concerned. Indeed, a Badli workman has no right to claim employment in place of any absentee employee. In any particular case, if there be some jobs to be performed and the employee concerned is absent, the Company may take in a Badli workman for the purpose. Badli workmen are really casual employees without any right to be employed. It has been rightly submitted by the learned Counsel for the appellant that the Badli employees could not be said to have been deprived of any work to which they had no right and, consequently, they are not entitled to any compensation for the closure. Indeed, the Industrial Court has itself observed that to allow the claim of Badli workmen would be tantamount to penalising the appellant. In spite of the said observation, the Industrial Court directed payment of compensation to the Badli workmen in place of certain categories of

regular employees. We fail to understand how the Industrial Court can direct payment of compensation to the Badli workmen when, admittedly, such Badli workmen, as noticed already, have no right to be employed. It may be that the Company may not have to pay closure compensation to the three categories of employees, as mentioned by the Industrial Court, but that does not mean that the Company has to pay compensation to the Badli workmen in place of these categories of employees. In this connection, we may refer to section 25C of the Industrial Disputes Act, 1947 which excludes a Badli workman or a A casual workman from the benefit of compensation in the case of layoff."

(emphasis supplied)

"16. In the circumstances, although we uphold the order of the Industrial Court for payment of compensation to the regular employees of the appellant at the rate fixed by it, we are unable to subscribe to the view that the compensation which would have been payable to the three categories of employees, should be paid to the Badli workmen. In other words, we hold that Badli workmen have no right to claim compensation on account of closure."

15. Mr.Patel submitted that the Apex Court in its earlier judgment in the matter between The Rashtriya Mill Mazdoor Sangh, Parel, Bombay and another v. The Apollo Mills Limited and others, reported in AIR 1960 SC 819, had not decided about the rights of the Badli workmen to get compensation. But as there was no challenge to the right of Badli workmen to get compensation, the Apex Court had directed payment of compensation to Badli workmen. Mr.Patel invited attention to para 17 of the judgement in the case of Apollo Mills (supra), which reads as under:

"17. We may at this stage read s. 40:

" 40. (1) Standing orders in respect of an employer and his employees settled under this Chapter and in operation, or where there are no such standing orders, model standing orders, if any, applicable under the provisions of subsection (5) of section 35 shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I.

(2)Notwithstanding anything contained in subsection (1) the State Government may refer, or an employee or a representative union may apply in respect of any dispute of the nature referred to in clause (a) of paragraph A of section 78, to a Labour Court."

The respondents contended that only the first subsection applied, and that under Standing Orders 16 and 17 quoted above, no compensation was claimable. The appellant pointed out that the second sub-section excluded the first subsection, because of the non- obstante clause with which it is prefaced and in view of the position of the Industrial Court as the appellate authority from awards of the Labour Court, the former was not also bound by the first subsection or the Standing Orders. There is some force in the contention of the appellant, but, in our opinion, Standing Orders 16 and 17 do not, in terms, apply to a claim for compensation such as is made here. Standing Order 16 speaks of stoppage "without notice and without compensation in lieu of notice." The compensation which is claimed by the workers in this case is not in lieu of notice, that is to say, for a period equal to that in respect of which notice would have had to be given. That period would be before the date of closure. The Standing Order contemplates those cases in which a notice has to be dispensed with and then no compensation in lieu of notice is payable. There is, however, here a question of quite a different sort, and it is not covered by Standing Order 16, even though the closure was by reason of stoppage of power. Standing Order 17 speaks of "wages", and we are not concerned with wages here but with compensation which is not the same thing as wages. In this view of the matter, Standing Orders 16 and 17 cannot be said to cover the present facts, and they are not, therefore, determinative of the relations between the parties."

16. Mr.Patel, the learned advocate for the respondents next submitted that the scheme floated by circular dated 8.7.1999 is only for permanent officers and employees of the GDDC Limited which can be inferred without any difficulty by reading various clauses of the scheme. Mr.Patel submitted that from the reading of

those clauses it is clear that the scheme is not meant for Badli workers. Mr.Patel specifically invited attention of the Court to a clause wherein it is provided that for each year of service a compensation of 35 days salary (salary + DA + HRA) is to be paid while for every year of remaining service, 25 days, salary is to be paid by way of compensation, details are also provided in that clause. He submitted that this is possible to work out only in cases of permanent officers and employees and not in the cases of Badli workers. Mr.Patel submitted that to state in the words of the Apex Court, "Badli workmen are really casual employees without any right to be employed." In a particular case, if there be some jobs to be performed and the employee concerned is absent, the company may take any Badli workman for the purpose. He submitted that the Honourable Apex Court has gone to the extent saying that, "Even in case of an 'absentee' 'Badli workman' has no right to claim employment". Mr.Patel submitted that the scheme itself has originated from the Govt. Circular dated 27.11.1997 and it is amended by another circular dated 28.7.1999. He further submitted that even from the order of B.I.F.R. it is clear that it is the Govt. of Gujarat, who has undertaken certain responsibility 'to abide by the decision of the courts with regard to demands of some of the workers who have approached different courts for better VRS offer and payment of other perks'. Said undertaking is only through transfer of assets and settlement of dues of the secured creditors. Para 4 of the order reads as under:

"4. PNB(OA) submitted their status report vide their letter dated 9.4.2001 indicating that no acceptable and viable rehabilitation scheme could be formulated and the networth of the Corporation was not expected to become positive in the near future because of its huge debt burden. As various alternatives to revive GDDC had failed, the most feasible way for keeping alive the viable plants of GDDC and reviving the operations of its dairies, appeared to be to transfer its assets to a stronger management like NDDB, who happened to be one of the major creditors of GDDCL. For smooth transfer of assets and reviving the operations of its diaries, settling of dues of other two secured creditors through OTS and offering VRS to all the workers was the only way. Thus, GDDCL may not remain in existence after full implementation of the scheme. Though some of the workers have approached different courts against the said VRS offer of the company and have demanded better VRS

offer and payment of other perks, the GOG/ GDDCL have undertaken to abide by the decision of the courts. It is felt that the proposed scheme is the only viable mode of rehabilitation through transfer of assets and settlement of dues of the secured creditors."

17. Mr.Patel submitted that there are about 148 to 150 Badli workers and extension of any benefit under VRS will be nothing but an extra burden on the public exchequer. Mr.Patel submitted that respondent no.1 cannot agree to any such extra burden, more particularly when VRS is floated under Govt. circular. Mr.Patel also submitted that as it stands, present VRS does not provide for any benefits to Badli workers and agreeing to extend any benefits under VRS to Badli workers will amount to floating a fresh VRS. Mr.Patel submitted that this is a realm of 'policy matter' and it is settled position of law that the courts' interference in policy matters is not warranted or called for.

18. Mr.Patel relied upon a judgement of this Court (Coram: K.M. Mehta, J.) in Special Civil Applications No.5498 of 1999 and 5743 of 1999 dated 3.5.2001. Mr.Patel submitted that the petitioner of those petitions had filed a petition under Articles 226 and 227 of the Constitution challenging circular dated 8.7.1999 (circular by which VRS is floated), being illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Mr.Patel relied upon para 10 of the said judgement, which reads as under :

"10. I am also of the view that whether to introduce the VRS or not is a question of policy of the Government as well as of the corporation. The question of policy is essentially for the State or the corporation to decide. Such policy depends upon number of circumstances and it is neither desirable nor possible to lay down as fixed standards. In my view, this Court has very limited jurisdiction to consider the legality and validity of the said policy. In my view, it is neither desirable nor advisable for this Court to direct the Government or corporation to adopt a particular policy which the Court deems fit proper in this behalf. I rely upon the judgements which have been cited by the learned Advocate General as well as advocate for the corporation in this behalf. In my view, the Court cannot sit in judgement over the wisdom of the policy evolved by the corporation. In my

view, the corporation is a sole repositories of the power to decide what policy should be pursued in relation to matters governing service condition of its employees. There is no scope for interference by this Court in this behalf. In my view whether the original circular is good or whether the amendment in the circular takes away the rights which were existed in the original circular, these are the questions of policy concern. So in my view while resolving the validity of the policy or amendment in policy issues like which policy will apply and which policy will beneficial to the employee, this is the exercise which the administrator and the corporation has to undertake. In my view, the Govt. and corporation have also power to change the policy. The executive power is not limited to frame a particular policy. It has untrammelled power to change, rechange, adjust and readjust the policy taking into account the relevant and germane considerations. In my view both Govt. and corporation has taken into relevant consideration viz. precarious financial position of the corporation. It is entirely in the discretion of the Government and corporation to decide how a policy of voluntary retirement should be shaped. In my view, therefore, all the decision which have been cited by Shri S.N. Shelat, learned Advocate General and Mr.K.M. Patel, learned advocate for the corporation, the ration of the judgements are that the court should not interfere with the policy matter."

19. Mr.Patel also relied upon a judgement of the Apex Court in the matter of State Bank of India and others v. State Bank of India Canteen Employees' Union (Bengal Circle) and others, reported in (2000) 5 SCC 531, wherein the Honourable Apex Court has held that policy decision are to be taken by the employer and the same cannot be dictated by the employees. Mr.Patel relied upon para 36 of the judgement which reads as under:

"36. Further, whether the Bank should provide canteen facilities in a branch having a staff strength of 100 or more employees on the basis of bipartite agreement between the bank management and the All India SBI Staff Federation, is a matter of policy decision and may depend upon viability and other factors of running of such canteens at other branches. It is for the Bank to decide in which branches canteen facilities

should be provided and not by the employees of the canteens run by the Local Implementation Committees. At the most, employees of the Bank can raise such a contention."

20. Mr.Patel submitted that some of the Badli workers had filed a Special Civil Application for the benefit of regularisation, the details of which are set out in para 4 of the petition. Said petitions were allowed by the learned Single Judge. But thereafter appeal being Letters Patent Appeal No.275 of 1997, is allowed and the said judgement of the learned Single Judge does not hold the field now.

21. Mr.Patel, learned advocate submitted that so far the contention raised about four persons whose names are mentioned in para 3 of the petition are concerned, the same is replied in para 8 of the affidavit in reply. Along with the affidavit in reply, appointment orders of these persons are also produced. Mr.Patel submitted that these four persons were the heirs of the persons who had held permanent post and that with a view to avoid any industrial unrest these persons were appointed and that they were nominated as daily rated Badli workers, they constituted a separate and distinct class and there is nothing comparable between these persons and the other Badli workers at large. Mr.Patel submitted that mainly they were appointed on compassionate grounds. Though they were nominated as daily rated/ Badli workers they were employed for all the days and they were getting salary accordingly. Mr.Patel invited attention to the contents of para 8 of the affidavit in reply at extenso.

22. Mr.Patel relied upon a judgement of the Apex Court in the matter between Chandigarh Administration and another v. Jagjit Singh and another, reported in AIR 1995 SC 705. Mr.Patel submitted that the Apex Court has observed in para 8 as under:

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination.

> The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. .. .."

23. Mr.Patel in the alternative submitted without admitting that these four persons were extended the benefit illegally, the same cannot be a basis for an order under Article 226 of the Constitution of India to extend similar benefits to other Badli workers. Mr.Patel relied upon a judgement of the Apex Court in the matter between Secretary, Jaipur Development Authority, Jaipur v. Daulatmal Jain and others, reported in (1997) 1 SCC 35, wherein the Apex Court held that, 'if some persons derive benefit illegally, other similarly circumstanced cannot claim the same benefit on ground of equality as that would amount to perpetuating the illegality through judicial process which Court cannot do'.

24. Mr.R.V. Desai, learned Assistant Govt. Pleader submitted that the circular of the Govt. dated 27.11.1997 was meant only for permanent employees and the scheme floated by respondent no.1 is under that circular

only. Only because that circular is not mentioned by date, it cannot take away the scheme out of the purview of the original circular dated 27.11.1997. He submitted that GDDC is under direct control and supervision of Agriculture & Cooperation Department of the Government and any decision involving financial implications are required to be submitted to the Finance Department. Mr.Desai submitted that more particularly when VRS is going to have direct implications involving finance, Circular dated 8.7.1999 issued by GDDC cannot be read to enlarge the scope of the original circular dated 27.11.1997 issued by the Government. Mr.Desai also submitted that the scheme itself does not give any right to any employee as in view of clause 7 of the scheme it is nothing but an invitation to offer. Once an employee makes an offer it is for the management to accept that offer or reject the same.

25. Taking into consideration the submissions made by both the sides and rival contentions raised by both the sides, it is clear that the VRS floated by the circular dated 8.7.1999 is meant only for permanent officers and employees of respondent no.1. Floating of VRS for its employees is a matter of policy decision and in view of the settled legal position, intervention of the court in the policy matters is not warranted. So far as the persons whose names are set out in para 3 of the petition it is clear from the affidavit in reply that though these persons were termed as 'daily rated badli workers', their appointment was on compassionate grounds and they did form a distinct and separate class and cannot be compared with other Badli workers, more particularly in light of the fact that the other Badli workers did not get any work since 1992.

26. In the alternative, even if respondent no.1 has given benefit of Voluntary Retirement Scheme to the persons without the same being applicable to them, it does not create a right in favour of other workers and this Court cannot order to extend the benefits of Voluntary Retirement Scheme to other Badli workers relying on those stray instances.

27. In the result this petition fails. The same is dismissed with no order as to costs. Notice is discharged.

(Ravi R. Tripathi, J.)

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